



In the Missouri Court of Appeals  
Eastern District

DIVISION FOUR

TERRY SCHILLING,	) No. ED87656
JOHN MOFFAT,	)
and BONNIE MOFFAT,	)
	)
Plaintiffs/Appellants,	) Appeal from the Circuit Court
	) of St. Louis County
v.	)
	)
CITY OF FRONTENAC	) Hon. Bernhardt C. Drumm, Jr.
	)
Defendant/Respondent.	) Filed: October 10, 2006

Before Roy L. Richter, P.J., Kathianne Knaup Crane, J., and Sherri B. Sullivan, J.

ORDER

Terry Schilling, John Moffat, and Bonnie Moffat (Homeowners) appeal from the trial court's judgment in favor of City of Frontenac (Frontenac) after a bench trial on Homeowners' action requesting declaratory judgment regarding the legal status of streets contained within the West End Park Subdivision (West End Park) and Frontenac's obligation for repair and improvement of West End Park streets.

We have reviewed the briefs of the parties and the record on appeal. Upon de novo review, we conclude that the trial court drew the proper legal conclusions from the facts stipulated before it. Junior College Dist. of St. Louis v. City of St. Louis, 149 S.W.3d 442, 446 (Mo. banc 2004). No error of law appears. An extended opinion would

have no precedential value. We have, however, provided a memorandum setting forth the reasons for our decision to the parties for their use only. We affirm the judgment pursuant to Missouri Rule of Civil Procedure 84.16(b).

PER CURIAM.



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MEMORANDUM SUPPLEMENTING ORDER  
AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(b)

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the judgment.

THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED, OR OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER COURT. IN THE EVENT OF THE FILING OF A MOTION TO REHEAR OR TRANSFER TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED TO ANY SUCH MOTION.

Terry Schilling, John Moffat, and Bonnie Moffat (Homeowners) appeal from the trial court's judgment in favor of the City of Frontenac (Frontenac) after a bench trial on Homeowners' action requesting declaratory judgment regarding the legal status of streets contained within the West End Park Subdivision (West End Park) and Frontenac's obligation for repair and improvement of West End Park streets. We affirm.

#### Background

Homeowners' action was tried below on a Revised Stipulation with attached exhibits. Homeowners are property owners and residents of West End Park Subdivision (West End Park) located in the City of Frontenac (Frontenac), Missouri. Frontenac is a fourth-class city.

On April 10, 1893, the plat of West End Park was recorded in the Office of the Recorder of Deeds of St. Louis County. This plat dedicated to public use forever all of the streets contained within West End Park. These streets included Denny (now Lindbergh), Fuqua (now Lylewood), Conway, Princess, Dwyer, Capitol, Gold Dust, North German, South German, Leela, Cable, Dwyer, Arthur, Savannah, Anzeiger, Garibaldi, and Donoho.

Until 1948, West End Park was in the unincorporated area of St. Louis County. Except for Conway Road, the extant records of St. Louis County do not disclose the adoption of any motion, resolution, ordinance or other instrument accepting the dedication of West End Park streets or the expenditure of any funds by St. Louis County for the grading, construction, maintenance, or repair of West End Park streets. Frontenac's predecessor, the Village of Frontenac, annexed West End Park in 1948.

Except for a portion of North German Boulevard, an examination of the minutes of meetings of the Frontenac Board of Aldermen and other Frontenac records does not disclose the adoption of any motion, resolution, ordinance or other instrument expressly accepting the dedication of the West End Park streets. However, it is undisputed that Conway Road within West End Park and the east 125 feet of North German Boulevard are public streets of Frontenac and are maintained, repaired, and improved by Frontenac.

Frontenac's extant records disclose approval by its Board of Alderman of various expenditures for work performed on West End Park streets between 1950 and 1958. In 1956, the Board of Aldermen provided for the vacation of Gold Dust Avenue between Lindbergh Boulevard and Leela Avenue. In 1961, they vacated Capitol Avenue between Lindbergh and Leela, and in 1971, they vacated the portion of Depot Avenue extending west from Leela, and the portion of Princess Avenue between Conway Road and Fuqua.

Thereafter, between 1972 and 1973, the Board of Aldermen adopted several resolutions and ordinances declaring the need for improvements to the West End streets, approving the institution of such improvements, and approving the issuance of special tax bills against the abutting properties. In 1974, the Board of Alderman adopted Ordinance 753, which established the West End Park Roads Committee and established a means to prepare a program for maintenance and improvement of certain named West End Park streets.

Several other street portions were vacated by ordinance in 1974. In 1975, the Board of Aldermen adopted a resolution accepting a portion of North German from the State.

In 1987, the Board of Aldermen, through the adoption of Ordinance 753, abolished the West End Park Roads Committee. Ordinance 753, citing West End Park's lack of subdivision restrictions, created the West End Park Homeowners Committee to "act as Board of Trustees for the residentially zoned portions" of the subdivision and to make recommendations to the Board for maintenance and improvement of the streets. Ordinance 753 was codified in Sections 520.010 through 520.040 of the Frontenac Code of Ordinances.

Section 520.030 of the Frontenac Code of Ordinances provides that expenditures by Frontenac for improvements or maintenance of West End Park streets will be reimbursed to Frontenac by means of special tax bills determined by apportioning the total expenditures on a front foot basis over the streets. In the years following the passage of Ordinance 753, Frontenac paid for street work, including maintenance, snow removal, and salting, and issued special tax bills to the adjoining property owners in accordance with Section 520.030.B.

On November 19, 2004, Homeowners filed a petition, requesting the trial court to declare that: 1) Section 520.030.B of the Frontenac Code of Ordinances was unreasonable, discriminatory, invalid and constituted a local and special law which denied Homeowners equal protection and due process; 2) all of the West End Park streets were public; 3) Frontenac was responsible for maintaining and improving the West End Park streets in accordance with the standards it followed with respect to other public streets within its limits; and 4) all work performed by Frontenac on the West End Park streets should comply with the applicable statutory requirements.

In its judgment, the trial court denied Homeowners' request for a declaration that the West End streets were public, concluding that no real, substantial, controversy presently existed, in that no party claimed the general public either was, or should be, excluded from the use of the streets, so a declaration that the streets were "public" would be a futile exercise.

The trial court, indicating that the "real, substantial, presently-existing controversy" actually was whether Frontenac had a legal obligation to improve and maintain the West End Park streets, concluded that Frontenac's Board of Aldermen has the authority and discretion to maintain and improve the West End Park streets and to assess the costs of such work against adjoining properties through the levy of special tax bills. The trial court further concluded that it was beyond the court's authority to intrude on Frontenac's discretion in the absence of an abuse of that discretion or a violation of applicable law.

As to Homeowners' claim that Section 520.030.B was unconstitutional, the trial court held: 1) Homeowners failed to establish an equal protection claim because they did not identify similarly-situated property owners that were being treated differently; 2) Homeowners failed to show Section 520.030.B lacked a rational basis; 3) Homeowners failed to establish a due process claim because they did not identify any cognizable constitutionally protected interest; and 4) Section 520.030 was not a special law because it applied to all those residential subdivisions which lacked a mechanism to improve and pay for streets adjacent to their properties.

The trial court decreed that Frontenac had the authority and discretion to determine whether, when, and how to improve, maintain, and repair the West End Park

streets and whether the expense for such work should be assessed against adjoining West End Park property owners, provided that such decisions and actions were made in accordance with applicable law. The trial court denied all other requested relief.

This appeal follows.

#### Points on Appeal

Homeowners raise four points on appeal. They claim the trial court erred: 1) in ruling that Homeowners failed to prove Frontenac accepted the streets, as a matter of common law, for public maintenance by its actions in annexing West End Park, expending public funds on the repair and improvement of West End Park streets, financing such repairs and improvements by special assessments, and exercising dominion over the streets; 2) in failing to declare the West End Park streets public by reason of the doctrine of common-law dedication; 3) in concluding the West End Park streets had not been accepted because such a conclusion irreconcilably conflicted with its determination that Frontenac has the authority and discretion to determine street improvement and maintenance and to assess costs against adjoining property owners; and 4) in failing to declare Section 520.030.B of Frontenac's Code of Ordinances invalid as a special law violative of Article III, Section 40 of the Missouri Constitution.

#### Standard of Review

When a court-tried case is submitted on stipulated facts, the only question before us is whether the trial court drew the proper legal conclusions from the facts so stipulated. Junior College Dist. of St. Louis v. City of St. Louis, 149 S.W.3d 442, 446 (Mo. banc 2004). We review questions of law de novo. Id.



### Discussion

Homeowners' first three points all address the trial court's denial of their request for a declaration that the streets of West End Park were public under the doctrine of common law dedication. Among other things, they request us to reverse the trial court's ruling and to enter judgment declaring that the streets have been accepted by Frontenac for public maintenance, repair and improvement and that Frontenac has the authority to determine when and how to maintain, repair, and improve the West End Park streets and how the costs incurred for such work are to be paid.

When a party seeks a declaratory judgment concerning the powers and duties of a governmental agency, that party must demonstrate a justiciable controversy requiring specific relief by way of a decree or judgment conclusive in character and determinative of the issues. Brooks v. Land Clearance for Redev. Authority of St. Louis Co., 425 S.W.2d 481, 482 (Mo. App. 1968). Actions are merely advisory if the judgment would not constitute a specific relief to one party or the other, or would not settle actual rights. State ex rel. Chilcutt v. Thatch, 221 S.W.2d 172, 129 (Mo. banc 1949). Where it appears the party seeking the declaration can have no relief against the defendant, the defendant should not be forced in litigation. Id. Declaratory judgments should have conclusive effect and should lay to rest the parties' controversy. Jones v. Carnahan, 965 S.W.2d 209, 214 (Mo. App. W.D. 1998).

Section 88.670.3 RSMo 2000 grants to fourth-class cities such as Frontenac "exclusive control over all streets, alleys, avenues and public highways within the limits of such city." Section 88.680 RSMo 2000 requires the cost of street improvements to be levied as a special assessment upon the abutting properties in proportion to their front

footage, unless the fourth-class city's board of aldermen desires to pay for the improvements out of the city's general revenue fund or other funds which the city has for such purposes and so specifies in the city's proceedings for such improvements. Thus, under these two statutes, Frontenac has complete discretion and control as to the time and manner of improving streets within its limits and is authorized to levy as a special assessment the costs of improvements upon the abutting properties.

A situation involving a governmental agency's statutorily authorized discretion was considered in Jones and is instructive here. See Jones, 965 S.W.2d at 214. In Jones, Division of Employment Security hearing officers filed an action against state officials, seeking, as pertinent, a declaratory judgment to compel the state to comply with a statute governing their salaries and seeking back pay. Id. at 211, 214. The statute dictated that the hearing officers' salaries be comparable to the salaries paid by other states of similar size and volume of operations. Id. at 214. The trial court, concluding that an order compelling the state to follow the terms of the statute would not resolve the parties' controversy, denied the request for declaratory judgment. Id. The appellate court agreed, determining that the broad discretion afforded the state in determining what salaries were comparable and which states had similar size and volume of operations rendered declaratory judgment inappropriate because the parties would remain in disagreement over how the state exercises its authorized discretion. Id.

Given the vast discretion granted to fourth-class cities regarding the streets within their borders, we conclude the trial court did not err in denying Homeowners' request for a declaration that the West End Park streets are public due to a lack of a real, substantial, presently-existing controversy. As in Jones, the parties here would remain in

disagreement over how Frontenac exercises its authorized discretion. Homeowners' first three points are denied.

In their final point, Homeowners claim that the trial court erred in failing to declare Section 520.030.B of Frontenac's City Code invalid as a special law violative of Article III, Section 40 of the Missouri Constitution.

Homeowners cite to a recent Missouri Supreme Court opinion, City of Springfield v. Sprint Spectrum, 2006 WL 2257073 slip op. (Mo. banc Aug. 8, 2006), in support of their argument that Section 520.030.B is an invalid special law that creates an impermissible fixed class that applies only to streets in West End Park. In City of Springfield, the Supreme Court considered a statute that prohibited collection by municipalities of business license taxes on telecommunication companies for wireless service already provided by those companies prior to the law's enactment. Id. Slip op. at \*1. The Court held that the statute violated the Missouri Constitution's prohibition against special laws because the statute created a fixed category of cities that was exempt from the tax restrictions imposed on all other cities. Id. Because such a fixed classification creates a presumption that a statute is unconstitutional, the party defending the statute bears the burden to demonstrate that the statute is constitutional. Id. slip op. at \*6. In its analysis, the Court found that substantial justification for failure to enact a general law in lieu of a special law had not been shown, and concluded the statute involved was invalid. Id. slip op. at \*\*6-7.

Because Section 520.030.B applies only to the streets in West End Park, Homeowners claim its unconstitutionality is presumed. However, Homeowners reach the conclusion that Section 520.030.B is a special law without considering whether Section

520.030.B includes less than all who are similarly situated; that is, whether any appropriate object of the class is excluded to which Section 520.030.B, but for its limitations, would apply. City of Springfield, 2006 WL 2257073 slip op. at \*4.

Sections 520.010 through 520.040 codify Ordinance 753, which was adopted by Frontenac's Board of Aldermen in 1987, established the West End Park Homeowners' Committee. Ordinance 753 expressly states that the residential subdivisions of Frontenac are almost exclusively governed by and subject to private subdivision restrictions. Recognizing as an exception that the West End Park Subdivision was created without the benefit of such restrictions and did not have a board of trustees, the ordinance provides for the formation of the West End Park Homeowners' Committee, "which shall in all circumstances act as Board of Trustees for the residentially zoned portions of the West End Park Subdivision."

Undeniably, Sections 520.010 through 520.040 apply only to West End Park. Homeowners single out Section 520.030.B and contend the appropriate comparison, for purposes of determining whether the municipal code is a special law, is between Frontenac's treatment of West End Park Streets and its treatment of its public streets. However, the pertinent question is whether Section 520.030 excludes any appropriate object to which the law, but for its limitations, would apply. City of Springfield, 2006 WL 2257073 slip op. at \*4. the appropriate comparison rather, is between Frontenac's treatment of West End Park and its treatment of other Frontenac residential subdivisions lacking private subdivision restrictions. In the record before us, West End Park is the only residential subdivision within Frontenac identified as lacking private subdivision restrictions and lacking a mechanism to improve and pay for streets within its boundaries.

We agree with the trial court that Homeowners failed to show that Section 520.030.B excludes other property owners similarly situated to them. Point denied.

Conclusion

The judgment of the trial court is affirmed.

PER CURIAM